

CHAPTER 30

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 23-100

BY SENATOR(S) Gardner, Gonzales, Kolker;
also REPRESENTATIVE(S) Snyder, Bird, Duran, Epps, Joseph, Lindsay, Marshall.

AN ACT

CONCERNING THE "UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, article 20 of title 15 as follows:

ARTICLE 20**Uniform Community Property Disposition at Death Act**

15-20-101. Short title. THIS ARTICLE 20 SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT", WHICH IS ALSO REFERRED TO AS "THIS ACT" OR "ACT" WITHIN THIS ARTICLE 20.

15-20-102. Definitions. IN THIS ARTICLE 20:

(1) "COMMUNITY PROPERTY SPOUSE" MEANS AN INDIVIDUAL IN A MARRIAGE OR OTHER RELATIONSHIP UNDER WHICH COMMUNITY PROPERTY COULD BE ACQUIRED DURING THE EXISTENCE OF THE RELATIONSHIP AND THAT REMAINS IN EXISTENCE AT THE TIME OF DEATH OF EITHER PARTY TO THE RELATIONSHIP.

(2) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(3) "JURISDICTION" MEANS THE UNITED STATES, A STATE, A FOREIGN COUNTRY, OR A POLITICAL SUBDIVISION OF A FOREIGN COUNTRY.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(4) "PARTITION" MEANS TO VOLUNTARILY DIVIDE PROPERTY TO WHICH THIS ACT OTHERWISE WOULD APPLY.

(5) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER LEGAL ENTITY.

(6) "PERSONAL REPRESENTATIVE" MEANS AN EXECUTOR, ADMINISTRATOR, SUCCESSOR PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR, AND OTHER PERSON THAT PERFORMS SUBSTANTIALLY THE SAME FUNCTION.

(7) "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP, WHETHER REAL OR PERSONAL, TANGIBLE OR INTANGIBLE, LEGAL OR EQUITABLE, OR ANY INTEREST THEREIN.

(8) "RECLASSIFY" MEANS A CHANGE IN THE CHARACTERIZATION OR TREATMENT OF COMMUNITY PROPERTY TO PROPERTY OWNED SEPARATELY BY A COMMUNITY PROPERTY SPOUSE.

(9) "RECORD" MEANS INFORMATION INSCRIBED ON A TANGIBLE MEDIUM OR STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN PERCEIVABLE FORM.

(10) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, TO EXECUTE OR ADOPT A TANGIBLE SYMBOL OR ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL.

(11) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY OTHER TERRITORY OR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY RECOGNIZED INDIAN TRIBE.

15-20-103. Included and excluded property. (1) SUBJECT TO SUBSECTION (3)(b) OF THIS SECTION, THIS ACT APPLIES TO THE FOLLOWING PROPERTY OF A COMMUNITY PROPERTY SPOUSE, WITHOUT REGARD TO HOW THE PROPERTY IS TITLED OR HELD:

(a) IF A DECEDENT WAS DOMICILED IN THIS STATE AT THE TIME OF DEATH:

(I) ALL OR A PROPORTIONATE PART OF EACH ITEM OF PERSONAL PROPERTY, WHEREVER LOCATED, THAT WAS COMMUNITY PROPERTY UNDER THE LAW OF THE JURISDICTION WHERE THE DECEDENT OR THE SURVIVING COMMUNITY PROPERTY SPOUSE WAS DOMICILED WHEN THE PROPERTY:

(A) WAS ACQUIRED; OR

(B) AFTER ACQUISITION, BECAME COMMUNITY PROPERTY;

(II) INCOME, RENT, PROFIT, APPRECIATION, OR OTHER INCREASE DERIVED FROM OR TRACEABLE TO PROPERTY DESCRIBED IN SUBSECTION (1)(a)(I) OF THIS SECTION; AND

(III) PERSONAL PROPERTY TRACEABLE TO PROPERTY DESCRIBED IN SUBSECTION (1)(a)(I) OR (1)(a)(II) OF THIS SECTION.

(2) IF COMMUNITY PROPERTY SPOUSES ACQUIRED COMMUNITY PROPERTY BY COMPLYING WITH THE LAW OF A JURISDICTION THAT ALLOWS FOR CREATION OF COMMUNITY PROPERTY BY TRANSFER OF PROPERTY TO A TRUST, THIS ACT APPLIES TO THE PROPERTY TO THE EXTENT THE PROPERTY IS HELD IN THE TRUST OR CHARACTERIZED AS COMMUNITY PROPERTY BY THE TERMS OF THE TRUST OR THE LAW OF THE JURISDICTION UNDER WHICH THE TRUST WAS CREATED.

(3) THIS ACT DOES NOT APPLY TO PROPERTY THAT:

(a) COMMUNITY PROPERTY SPOUSES HAVE PARTITIONED OR RECLASSIFIED;

(b) IS THE SUBJECT OF A WAIVER OF RIGHTS GRANTED BY THIS ACT; OR

(c) IS ACQUIRED BY SPOUSES DOMICILED IN THIS STATE THAT IS NOT PROPERTY IDENTIFIED IN SUBSECTIONS (1) AND (2) OF THIS SECTION.

15-20-104. Form of partition, reclassification, or waiver. (1) COMMUNITY PROPERTY SPOUSES DOMICILED IN THIS STATE MAY PARTITION OR RECLASSIFY PROPERTY TO WHICH THIS ACT WOULD OTHERWISE APPLY. THE PARTITION OR RECLASSIFICATION MUST BE IN A RECORD SIGNED BY COMMUNITY PROPERTY SPOUSES.

(2) A COMMUNITY PROPERTY SPOUSE DOMICILED IN THIS STATE MAY WAIVE A RIGHT GRANTED BY THIS ACT ONLY BY COMPLYING WITH THE LAW OF THIS STATE, INCLUDING THIS STATE'S CHOICE-OF-LAW RULES, APPLICABLE TO WAIVER OF A SPOUSAL PROPERTY RIGHT.

15-20-105. Community property presumption. ALL PROPERTY ACQUIRED BY A COMMUNITY PROPERTY SPOUSE WHEN DOMICILED IN A JURISDICTION WHERE COMMUNITY PROPERTY THEN COULD BE ACQUIRED BY THE COMMUNITY PROPERTY SPOUSE BY OPERATION OF LAW IS PRESUMED TO BE COMMUNITY PROPERTY. THIS PRESUMPTION MAY BE REBUTTED BY A PREPONDERANCE OF THE EVIDENCE.

15-20-106. Disposition of property at death. (1) ONE-HALF OF THE PROPERTY TO WHICH THIS ACT APPLIES BELONGS TO THE SURVIVING COMMUNITY PROPERTY SPOUSE OF A DECEDENT AND IS NOT SUBJECT TO DISPOSITION BY THE DECEDENT AT DEATH OR DISTRIBUTION UNDER THE LAWS OF SUCCESSION OF THIS STATE AS A RESULT OF THE DECEDENT'S DEATH.

(2) ONE-HALF OF THE PROPERTY TO WHICH THIS ACT APPLIES BELONGS TO THE DECEDENT AND IS SUBJECT TO DISPOSITION BY THE DECEDENT AT DEATH.

(3) FOR PURPOSES OF CALCULATING THE AUGMENTED ESTATE OF THE DECEDENT AND THE ELECTIVE-SHARE RIGHT OF THE SURVIVING COMMUNITY PROPERTY SPOUSE:

(a) PROPERTY UNDER SUBSECTION (1) OF THIS SECTION IS PROPERTY OF THE SURVIVING COMMUNITY PROPERTY SPOUSE; AND

(b) PROPERTY UNDER SUBSECTION (2) OF THIS SECTION IS PROPERTY OF THE DECEDENT.

(4) EXCEPT FOR THE PURPOSE OF CALCULATING THE AUGMENTED ESTATE OF THE DECEDENT AND THE ELECTIVE SHARE RIGHT OF THE SURVIVING COMMUNITY PROPERTY SPOUSE PURSUANT TO PART 2 OF ARTICLE 11 OF THIS TITLE 15, THIS SECTION DOES NOT APPLY TO PROPERTY TRANSFERRED BY RIGHT OF SURVIVORSHIP OR UNDER A REVOCABLE TRUST OR OTHER NONPROBATE TRANSFER.

(5) THIS SECTION DOES NOT LIMIT THE RIGHT OF A SURVIVING COMMUNITY PROPERTY SPOUSE TO THE STATUTORY ALLOWANCES PURSUANT TO SECTIONS 15-11-402, 15-11-403, AND 15-11-404.

(6) IF AT DEATH A DECEDENT PURPORTS TO TRANSFER TO A THIRD PERSON, PROPERTY THAT, UNDER THIS SECTION, BELONGS TO THE SURVIVING COMMUNITY PROPERTY SPOUSE AND TRANSFERS OTHER PROPERTY TO THE SURVIVING COMMUNITY PROPERTY SPOUSE, THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE COURT UNDER OTHER LAW OF THIS STATE TO REQUIRE THAT THE COMMUNITY PROPERTY SPOUSE ELECT BETWEEN RETAINING THE PROPERTY TRANSFERRED TO THE COMMUNITY PROPERTY SPOUSE OR ASSERTING RIGHTS UNDER THIS ACT.

15-20-107. Other remedies available at death. (1) UPON THE DEATH OF A COMMUNITY PROPERTY SPOUSE, THE SURVIVING COMMUNITY PROPERTY SPOUSE OR A PERSONAL REPRESENTATIVE, HEIR, OR NONPROBATE TRANSFEREE OF THE DECEDENT MAY ASSERT A RIGHT BASED ON AN ACT OF:

(a) THE SURVIVING COMMUNITY SPOUSE OR DECEDENT DURING THE MARRIAGE OR OTHER RELATIONSHIP UNDER WHICH COMMUNITY PROPERTY THEN COULD BE ACQUIRED; OR

(b) THE DECEDENT THAT TAKES EFFECT AT THE DEATH OF THE DECEDENT.

(2) IN DETERMINING A RIGHT PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, AND A CORRESPONDING REMEDY, THE COURT:

(a) SHALL APPLY EQUITABLE PRINCIPLES; AND

(b) MAY CONSIDER THE COMMUNITY PROPERTY LAW OF THE JURISDICTION WHERE THE DECEDENT OR SURVIVING COMMUNITY PROPERTY SPOUSE WAS DOMICILED WHEN PROPERTY WAS ACQUIRED OR ENHANCED.

15-20-108. Right of surviving community property spouse. (1) THE SURVIVING COMMUNITY PROPERTY SPOUSE OF THE DECEDENT MAY ASSERT A CLAIM FOR RELIEF WITH RESPECT TO A RIGHT UNDER THIS ACT IN ACCORDANCE WITH THE FOLLOWING:

(a) IN AN ACTION ASSERTING A RIGHT IN OR TO PROPERTY, THE SURVIVING COMMUNITY PROPERTY SPOUSE MUST:

(1) COMMENCE AN ACTION AGAINST AN HEIR, DEVISEE, OR NONPROBATE TRANSFEREE OF THE DECEDENT THAT IS IN POSSESSION OF THE PROPERTY NOT LATER

THAN THREE YEARS AFTER THE DEATH OF THE DECEDENT; OR

(II) AFTER THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE OF THE DECEDENT, SEND A DEMAND IN A RECORD TO THE PERSONAL REPRESENTATIVE NOT LATER THAN THE TIME PERIODS SET FORTH IN SECTION 15-12-803; AND

(b) IN AN ACTION OTHER THAN AN ACTION PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE SURVIVING COMMUNITY PROPERTY SPOUSE MUST:

(I) AFTER THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE OF THE DECEDENT, SEND A DEMAND IN RECORD TO THE PERSONAL REPRESENTATIVE NOT LATER THAN THE TIME PERIODS SET FORTH IN SECTION 15-12-803; OR

(II) IF A PERSONAL REPRESENTATIVE IS NOT APPOINTED, COMMENCE AN ACTION NOT LATER THAN THREE YEARS AFTER THE DEATH OF THE DECEDENT.

(2) UNLESS A TIMELY DEMAND IS MADE UNDER SUBSECTION (1)(a)(I) OR (1)(b)(I) OF THIS SECTION, THE PERSONAL REPRESENTATIVE MAY DISTRIBUTE THE ASSETS OF THE DECEDENT'S ESTATE WITHOUT PERSONAL LIABILITY FOR A COMMUNITY PROPERTY SPOUSE'S CLAIM UNDER THIS ACT.

15-20-109. Right of heir, devisee, or nonprobate transferee. (1) AN HEIR, DEVISEE, OR NONPROBATE TRANSFEREE OF A DECEASED COMMUNITY PROPERTY SPOUSE MAY ASSERT A CLAIM FOR RELIEF WITH RESPECT TO A RIGHT UNDER THIS ACT PURSUANT TO THE FOLLOWING RULES:

(a) IN AN ACTION ASSERTING A RIGHT IN OR TO PROPERTY, THE HEIR, DEVISEE, OR NONPROBATE TRANSFEREE MUST:

(I) COMMENCE AN ACTION AGAINST THE SURVIVING COMMUNITY PROPERTY SPOUSE OF THE DECEDENT WHO IS IN POSSESSION OF THE PROPERTY, NOT LATER THAN THREE YEARS AFTER THE DEATH OF THE DECEDENT; OR

(II) SEND A DEMAND IN A RECORD TO THE PERSONAL REPRESENTATIVE, NOT LATER THAN THE TIME PERIODS SET FORTH IN SECTION 15-12-803.

(b) IN AN ACTION OTHER THAN AN ACTION PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE HEIR, DEVISEE, OR NONPROBATE TRANSFEREE MUST:

(I) SEND A DEMAND IN A RECORD TO THE PERSONAL REPRESENTATIVE, NOT LATER THAN THE TIME PERIODS SET FORTH IN SECTION 15-12-803 AFTER THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE OF THE DECEDENT; OR

(II) IF A PERSONAL REPRESENTATIVE IS NOT APPOINTED, COMMENCE THE ACTION NOT LATER THAN THREE YEARS AFTER THE DEATH OF THE DECEDENT.

(2) UNLESS A TIMELY DEMAND IS MADE UNDER SUBSECTION (1)(a)(II) OR (1)(b)(I) OF THIS SECTION, THE PERSONAL REPRESENTATIVE MAY DISTRIBUTE THE ASSETS OF THE DECEDENT'S ESTATE WITHOUT PERSONAL LIABILITY FOR AN HEIR'S, DEVISEE'S, OR NONPROBATE TRANSFEREE'S CLAIM UNDER THIS ACT.

15-20-110. Protection of third person. (1) WITH RESPECT TO PROPERTY TO WHICH THIS ACT APPLIES, A PERSON IS NOT LIABLE UNDER THIS ACT TO THE EXTENT THE PERSON:

(a) TRANSACTS IN GOOD FAITH AND FOR VALUE:

(I) WITH A COMMUNITY PROPERTY SPOUSE;

(II) AFTER THE DEATH OF THE DECEDENT, WITH A SURVIVING COMMUNITY PROPERTY SPOUSE, PERSONAL REPRESENTATIVE, HEIR, DEVISEE, OR NONPROBATE TRANSFEREE OF THE DECEDENT; OR

(III) WITH A FIDUCIARY ACTING ON BEHALF OF ANY SUCH PERSON, OR A TRUSTEE OF A TRUST HOLDING COMMUNITY PROPERTY; AND

(b) DOES NOT KNOW OR HAVE REASON TO KNOW THAT THE OTHER PARTY TO THE TRANSACTION IS EXCEEDING OR IMPROPERLY EXERCISING THE PARTY'S AUTHORITY.

(2) GOOD FAITH UNDER SUBSECTION (1)(a) OF THIS SECTION DOES NOT REQUIRE THE PERSON TO INQUIRE INTO THE EXTENT OR PROPRIETY OF THE EXERCISE OF AUTHORITY BY THE OTHER PARTY TO THE TRANSACTION.

15-20-111. Principles of law and equity. THE PRINCIPLES OF LAW AND EQUITY SUPPLEMENT THIS ACT EXCEPT TO THE EXTENT INCONSISTENT WITH THIS ACT.

15-20-112. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS ACT, A COURT SHALL CONSIDER THE PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT ENACT IT.

15-20-113. Saving provision. IF A RIGHT WITH RESPECT TO PROPERTY TO WHICH THIS ACT APPLIES IS ACQUIRED, EXTINGUISHED, OR BARRED ON THE EXPIRATION OF A LIMITATION PERIOD THAT BEGAN TO RUN UNDER ANOTHER STATUTE BEFORE THE EFFECTIVE DATE OF THIS ACT, THAT STATUTE CONTINUES TO APPLY TO THE RIGHT EVEN IF THE STATUTE HAS BEEN REPEALED OR SUPERSEDED BY THIS ACT.

15-20-114. Transitional provision. EXCEPT AS PROVIDED IN SECTION 15-20-113, THIS ACT APPLIES TO A JUDICIAL PROCEEDING WITH RESPECT TO PROPERTY TO WHICH THIS ACT APPLIES COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT, REGARDLESS OF THE DATE OF DEATH OF THE DECEDENT.

15-20-115. Severability. IF A PROVISION OF THIS ACT OR ITS APPLICATION TO A PERSON OR CIRCUMSTANCE IS HELD INVALID, THE VALIDITY DOES NOT AFFECT ANOTHER PROVISION OR APPLICATION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION.

15-20-116. Effective date. THIS ACT TAKES EFFECT JULY 1, 2023.

SECTION 2. In Colorado Revised Statutes, 15-11-208, **add** (4) as follows:

15-11-208. Exclusions, valuations, and overlapping application.
(4) **Community property.** IF THERE IS A DISPARITY IN THE TITLING OF PROPERTY

PURSUANT TO SECTIONS 15-11-204, 15-11-205, 15-11-206, AND 15-11-207, AND THE OWNERSHIP OF THE PROPERTY PURSUANT TO ARTICLE 20 OF TITLE 15, THEN THE COMMUNITY PROPERTY OWNERSHIP CONTROLS AND ONE-HALF OF THE COMMUNITY PROPERTY MUST BE INCLUDED PURSUANT TO SECTIONS 15-11-204, 15-11-205, 15-11-206, AND 15-11-207, AS APPLICABLE, AND ANY ADMINISTRATIVE EXPENSES RELATING TO AND ENFORCEABLE CLAIMS AGAINST THE COMMUNITY PROPERTY MUST BE ALLOCATED EQUALLY BETWEEN THE DECEDENTS AND THE SURVIVING SPOUSE'S SHARES OF THE COMMUNITY PROPERTY.

SECTION 3. Effective date. This act takes effect July 1, 2023.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: March 23, 2023